

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1090

Introduced by Assembly Member Fong

February 22, 2013

An act to amend Section 1097 of, and to add Sections 1097.1, 1097.2, 1097.3, and 1097.4 to, the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1090, as amended, Fong. Public officers: conflicts of interest: contracts.

The Political Reform Act of 1974 establishes the Fair Political Practices Commission as the agency responsible for enforcing the act. *The act authorizes the Commission to issue an opinion or advice to a person with respect to that person's duties under the act, as specified.* The act authorizes the Commission to seek and impose administrative and civil penalties against persons who violate the act, as prescribed.

Existing law prohibits Members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law makes a willful violation of this prohibition a crime.

This bill would also make a person who violates the prohibition against being financially interested in a contract, or who causes another person to violate or who aids and abets another person in violating the prohibition, subject to administrative and civil fines, as specified. The bill would authorize the Commission to enforce these violations by bringing an administrative or civil action against a person who is subject

to the prohibition, as specified, *upon written authorization from the district attorney of the county in which the alleged violation occurred.*

This bill would authorize a person who is subject to those prohibitions to request an opinion or advice from the Commission with respect to those prohibitions. The bill would authorize the Commission to issue opinions and advice to those persons consistent with the manner in which the Commission provides opinions and advice pursuant to the act.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1097 of the Government Code is amended
2 to read:
3 1097. (a) An officer or person prohibited by ~~the laws of this~~
4 ~~state~~ *Section 1090* from making or being interested in contracts,
5 or from becoming a vendor or purchaser at sales, or from
6 purchasing scrip, or other evidences of indebtedness, including
7 any member of the governing board of a school district, who
8 willfully violates any provision of ~~those laws~~ *Section 1090* is
9 punishable by a fine of not more than one thousand dollars
10 (\$1,000), or by imprisonment in the state prison, and is forever
11 disqualified from holding any office in this state.
12 (b) An officer or person prohibited by ~~the laws of this state~~
13 *Section 1090* from making or being interested in contracts, or from
14 becoming a vendor or purchaser at sales, or from purchasing scrip,
15 or other evidences of indebtedness, including any member of the
16 governing board of a school district, who violates any provision
17 of ~~those laws~~ *Section 1090*, who causes any other person to violate
18 any provision of ~~those laws~~ *Section 1090*, or who aids and abets
19 any other person in the violation of any provision of ~~those laws~~
20 *Section 1090* shall be liable in an administrative action commenced
21 by the Commission as provided in Section 1097.1 or a civil action
22 commenced by the Commission as provided in Section 1097.2.

(c) The Commission shall not commence an administrative or civil action pursuant to subdivision (b) against a person ~~if a criminal prosecution is being pursued against~~ *except upon written authorization from the district attorney of the county in which the alleged violation occurred. A civil action alleging a violation of Section 1090 shall not be filed against a person pursuant to this section if the Attorney General or a district attorney is pursuing a criminal prosecution of that person pursuant to subdivision (a).*

(d) If two or more persons are responsible for a violation of this section, they shall be jointly and severally liable.

(e) *A person who is subject to the prohibitions of Section 1090, or that person's authorized representative, may request an opinion or advice from the Commission with respect to his or her duties under Section 1090. The Commission may provide an opinion or formal or informal advice to that person in a manner consistent with the Commission's duties and authority to provide opinions and advice pursuant to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)) and implementing regulations adopted by the Commission. The Commission's authority to issue opinions and advice pursuant to this subdivision is concurrent with the authority of the Attorney General to issue opinions and advice to a person with respect to Section 1090.*

(f) *The Commission may adopt, amend, and rescind regulations to implement this section and Sections 1097.1, 1097.2, 1097.3, and 1097.4 in the same manner as provided in Section 83112.*

~~(e)~~

(g) For purposes of this section and Sections 1097.1, 1097.2, 1097.3, and 1097.4, "Commission" means the Fair Political Practices Commission.

SEC. 2. Section 1097.1 is added to the Government Code, to read:

1097.1. (a) Upon the sworn complaint of a person or on its own initiative, the Commission ~~may~~ *shall* investigate possible violations of Section 1090 relating to any officer or person subject to that section. ~~Within 14 days after receipt of a complaint, the Commission shall notify in writing the person who made the complaint of the action, if any, the Commission has taken or plans to take on the complaint, together with the reasons for such action or nonaction. If no decision has been made within 14 days, the person who made the complaint shall be notified of the reasons~~

1 for the delay and shall subsequently receive notification as provided
2 above. *The Commission shall provide a written notification to the*
3 *person filing a complaint in the manner described in Section 83115.*

4 (b) ~~The Commission shall not make a finding of probable cause~~
5 ~~to believe Section 1090 has been violated unless, at least 21 days~~
6 ~~prior to the Commission's consideration of the alleged violation,~~
7 ~~the person alleged to have violated Section 1090 is notified of the~~
8 ~~alleged violation by service of process or registered mail with~~
9 ~~return receipt requested, provided with a summary of the evidence,~~
10 ~~and informed of his or her right to be present in person and~~
11 ~~represented by counsel at any proceeding of the Commission held~~
12 ~~for the purpose of considering whether probable cause exists for~~
13 ~~believing the person violated Section 1090. Notice to the alleged~~
14 ~~violation shall be deemed made on the date of service, the date the~~
15 ~~registered mail receipt is signed, or if the registered mail receipt~~
16 ~~is not signed, the date returned by the post office. A proceeding~~
17 ~~held for the purpose of considering probable cause shall be private~~
18 ~~unless the alleged violator files with the Commission a written~~
19 ~~request that the proceeding be public~~ *the Commission has notified*
20 *the person who is alleged to have violated Section 1090 in the*
21 *manner described in Section 83115.5.*

22 (c) ~~If the Commission determines there is probable cause to~~
23 ~~believe Section 1090 has been violated, it may hold a hearing to~~
24 ~~determine if a violation has occurred, subject to the requirements~~
25 ~~of subdivision (c) of Section 1097 and in the manner described in~~
26 ~~Section 83116. Notice shall be given and the hearing conducted~~
27 ~~in accordance with the Administrative Procedure Act (Chapter 5~~
28 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
29 ~~2). The Commission shall have all the powers granted by that~~
30 ~~chapter. If the Commission determines that no violation has~~
31 ~~occurred, it shall issue a letter so stating. If the Commission~~
32 ~~determines on the basis of a hearing that a violation has occurred,~~
33 ~~it shall issue an order requiring the violator to cease and desist~~
34 ~~violation of Section 1090, pay a monetary penalty of up to five~~
35 ~~thousand dollars (\$5,000) per violation to the Commission for~~
36 ~~deposit in the General Fund of the state, or both.~~

37 (d) ~~If the Commission rejects the decision of an administrative~~
38 ~~law judge made pursuant to Section 11517, the Commission shall~~
39 ~~state the reasons in writing for rejecting the decision, as required~~
40 ~~by Section 83116.3.~~

1 ~~(e) The Commission may subpoena witnesses, compel their~~
2 ~~attendance and testimony, administer oaths and affirmations, take~~
3 ~~evidence and require by subpoena the production of books, papers,~~
4 ~~records, or other items material to the performance of the~~
5 ~~Commission's duties or exercise of its powers under this section~~
6 ~~shall have all of the subpoena powers provided in Section 83118~~
7 ~~to assist in the performance of the Commission's duties under this~~
8 ~~section.~~

9 ~~(f) The Commission may refuse to excuse a person from~~
10 ~~testifying, or from producing books, records, correspondence,~~
11 ~~documents, or other evidence in obedience to a subpoena of the~~
12 ~~Commission notwithstanding an provide immunity from~~
13 ~~prosecution for testimony compelled by the Commission over a~~
14 ~~person's objection that the testimony or evidence required of him~~
15 ~~or her may tend to incriminate that person, as provided in Section~~
16 ~~83119, with respect to possible violations of Section 1090. In~~
17 ~~addition to the requirements of Section 83119, the Commission~~
18 ~~shall not grant immunity to a witness pursuant to this section unless~~
19 ~~the Commission has obtained written authorization from the~~
20 ~~Attorney General and the district attorney of the county in which~~
21 ~~the alleged violation occurred. An individual shall not be~~
22 ~~prosecuted in any manner or subjected to any penalty or forfeiture~~
23 ~~for or on account of any transaction, act, matter, or thing~~
24 ~~concerning which he or she is compelled, after having claimed his~~
25 ~~or her privilege against self-incrimination, to testify or produce~~
26 ~~evidence, except that the individual so testifying shall not be~~
27 ~~exempt from prosecution and punishment for perjury committed~~
28 ~~in so testifying. Immunity shall not be granted to a witness under~~
29 ~~this section unless the Commission has notified the Attorney~~
30 ~~General of its intention to grant immunity to the witness at least~~
31 ~~30 days in advance or unless the Attorney General waives this~~
32 ~~requirement.~~

33 ~~(g) An interested person may seek judicial review of any action~~
34 ~~of the Commission under this section.~~

35 ~~(h)~~

36 ~~(g) The Commission shall not commence an administrative~~
37 ~~action pursuant to this section against a person who is subject to~~
38 ~~Section 1090 alleging a violation of that section if the Commission~~
39 ~~has commenced a civil action pursuant to Section 1097.2 against~~
40 ~~that person for the same violation.~~

1 ~~(i) An administrative action shall be brought pursuant to this~~
2 ~~section no later than five years after the date on which the violation~~
3 ~~occurred.~~

4 ~~(1)~~

5 ~~(h)~~ *An administrative action brought pursuant to this section*
6 ~~shall be subject to the requirements of Section 91000.5. For~~
7 ~~purposes of this subdivision that section, the commencement of~~
8 ~~the administrative action shall be the date of the service of the~~
9 ~~probable cause hearing notice, as required by subdivision (b), upon~~
10 ~~the person alleged to have violated Section 1090.~~

11 ~~(2) If the person alleged to have violated Section 1090 engages~~
12 ~~in the fraudulent concealment of his or her acts or identity, the~~
13 ~~five-year period shall be tolled for the period of concealment. For~~
14 ~~purposes of this subdivision, “fraudulent concealment” means the~~
15 ~~person knows of material facts related to his or her duties under~~
16 ~~Section 1090 and knowingly conceals them in performing or failing~~
17 ~~to perform those duties, for the purpose of defrauding the public~~
18 ~~of information to which it is entitled.~~

19 ~~(3) If, upon being ordered by a superior court to produce any~~
20 ~~documents sought by a subpoena in any administrative action under~~
21 ~~this section, the person alleged to have violated Section 1090 fails~~
22 ~~to produce documents in response to the order by the date ordered~~
23 ~~to comply therewith, the five-year period shall be tolled for the~~
24 ~~period of the delay from the date of filing of the motion to compel~~
25 ~~until the date the documents are produced.~~

26 SEC. 3. Section 1097.2 is added to the Government Code, to
27 read:

28 1097.2. (a) ~~The Subject to the requirements of subdivision (c)~~
29 ~~of Section 1097, the~~ Commission may file a civil action against a
30 person subject to the prohibitions identified in Section 1090. A
31 person held liable for a violation of Section 1090 shall be subject
32 to a civil fine payable to the Commission for deposit in the General
33 Fund of the state in an amount not to exceed three times the value
34 of the financial benefit received by the person, as determined by
35 the trier of fact.

36 (b) The Commission shall not commence a civil action pursuant
37 to this section alleging a violation of Section 1090 if the
38 Commission has commenced an administrative action pursuant to
39 Section 1097.1 against the person for the same violation.

1 (c) A civil action brought by the Commission pursuant to this
2 section shall be filed not more than four years after the date the
3 violation occurred.

4 SEC. 4. Section 1097.3 is added to the Government Code, to
5 read:

6 1097.3. ~~(a) In addition to any other remedies available, the~~
7 ~~Commission may obtain a judgment in superior court for the~~
8 ~~purpose of collecting any unpaid monetary penalties, fees, or civil~~
9 ~~penalties imposed pursuant to Section 1097.1 or 1097.2. The action~~
10 ~~may be filed as a small claims, limited civil, or unlimited civil~~
11 ~~case, depending on the jurisdictional amount. The venue for this~~
12 ~~action shall be in the county where the monetary penalties, fees,~~
13 ~~or civil penalties were imposed. In order to obtain a judgment in~~
14 ~~an action under this section, the Commission shall show, following~~
15 ~~the procedures and rules of evidence as applied in ordinary civil~~
16 ~~actions, all of the following:~~

17 ~~(1) The monetary penalties, fees, or civil penalties were imposed~~
18 ~~following the procedures set forth in Section 1097.1 or 1097.2.~~

19 ~~(2) The defendant or defendants in the action were notified, by~~
20 ~~actual or constructive notice, of the imposition of the monetary~~
21 ~~penalties, fees, or civil penalties.~~

22 ~~(3) A demand for payment has been made by the Commission~~
23 ~~and full payment has not been received.~~

24 ~~(b) A civil action brought pursuant to subdivision (a) shall be~~
25 ~~commenced within four years after the date on which the monetary~~
26 ~~penalty, fee, or civil penalty was imposed. Penalties shall be~~
27 ~~collected in accordance with Section 91013.5.~~

28 SEC. 5. Section 1097.4 is added to the Government Code, to
29 read:

30 1097.4. (a) If the time for judicial review of a final
31 Commission order or decision issued pursuant to Section 1097.1
32 has lapsed, or if all means of judicial review of the order or decision
33 have been exhausted, the Commission may apply to the clerk of
34 the superior court for a judgment to collect the penalties imposed
35 by the order or decision, or the order as modified in accordance
36 with a decision on judicial review.

37 (1) The application, which shall include a certified copy of the
38 order or decision, or the order as modified in accordance with a
39 decision on judicial review, and proof of service of the order or
40 decision, constitutes a sufficient showing to warrant issuance of

1 the judgment to collect the penalties. The clerk of the court shall
2 enter the judgment immediately in conformity with the application.

3 (2) An application made pursuant to this section shall be made
4 to the clerk of the superior court in the county where the monetary
5 penalties, fees, or civil penalties were imposed by the Commission.

6 (3) A judgment entered in accordance with this section has the
7 same force and effect as, and is subject to all the provisions of law
8 relating to, a judgment in a civil action and may be enforced in the
9 same manner as any other judgment of the court in which it is
10 entered.

11 (4) The Commission may bring an application pursuant to this
12 section only within four years after the date on which the monetary
13 penalty, fee, or civil penalty was imposed.

14 (b) The remedy available under this section is in addition to
15 those available under Section 1097.3 or any other law.

16 SEC. 6. The Legislature finds and declares that this bill furthers
17 the purposes of the Political Reform Act of 1974 within the
18 meaning of subdivision (a) of Section 81012 of the Government
19 Code.